

**STATE OF MICHIGAN
IN THE 4th JUDICIAL CIRCUIT COURT COUNTY OF JACKSON
CRIMINAL DIVISION**

PEOPLE OF THE STATE OF MICHIGAN
Plaintiff,

Case No. 20-003173-FH
Hon. Thomas Wilson

V

PETE MUSICO
Defendant.

MICHIGAN ATTORNEY GENERAL'S OFFICE
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JACKSON COUNTY PUBLIC
DEFENDER
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505 SOUTH JACKSON STREET
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DEFENDANT'S RESPONSE TO
PEOPLE'S GOECKE TO AMEND THE INFORMATION

Now, here comes the defendant, Pete Musico, by and through his attorney, Kareem L.

Johnson, and states the following to this honorable Court:

The District Court for the County of Jackson held a three-day preliminary examination beginning on March 3, 2021, on a multiple county complaint.

The Court then heard an oral argument on March 29, 2021. At the conclusion of that examination, the Court dismissed a count of Making a Terrorist Threat or False Report Terrorism.¹

After hearing the oral argument, the Court dismissed that Count against Pete Musico. The Court's ruling was based on two primary issues: (1) that Mr. Musico did not specifically intend to

threaten anyone; (2) that because the statement was made to other alleged co-conspirators, it was not communicated as required by statute.

The Court's ruling was consistent with legal principles and case law.

Wherefore, we humbly ask this Court to affirm the decision made by the District Court.

Respectfully Submitted,

Kareem Johnson (P71988)
Attorney for Defendant
505 South Jackson Street
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(517) 768-6883

¹ M.C.L. 750.543m

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BRIEF IN SUPPORT OF
DEFENDANT'S RESPONSE TO
PEOPLE'S GOECKE TO AMEND THE INFORMATION

Now, here comes the defendant, Pete Musico, by and through his attorney, Kareem L. Johnson, and states the following to this honorable Court:

FACTS

On March 3, 2021, Pete Musico had a preliminary examination in the Jackson County District Court. On March 29, 2021, the District Court held oral arguments. The Court ruled that there was insufficient evidence to bind over Mr. Musico on a count of Making a Threat of Terrorism¹. The government only charged Mr. Musico with one count of Making a Threat of Terrorism. However, they tried to argue three different statements to support a bind over. First, they allege that Mr. Musico made a statement of doing a "reverse red flag." Secondly, they

alleged that while having a conversation with Adam Fox, he said he wanted to "kick it off right there." Lastly, they allege that during a protest he was willing to commit Jihad and martyr himself.

THE DISTRICT COURT
WAS SUBSTANTIALLY CORRECT IN ITS
INTENT ANALYSIS

The Court was correct in its intent analysis of the Terrorist Threat statute. In *Osantowski*, the Court held that the Legislature's use of the word "threat" was a "true threat" as described in the United States Supreme Court jurisprudence.ⁱⁱ The United States Supreme Court has said that a true threat "encompasses [es] those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals."ⁱⁱⁱ The District Court correctly saw the two issues present, regardless of the terminology. The Michigan Court has ruled that a defendant needs to have the general intent to make the statement. However, to apply United States Supreme Court jurisprudence, the statement must include a threat. A threat is a communication specifically intended to communicate an intent to commit some act of violence. The District Court was correct to fully explore the definition of threat under Michigan law. When evaluating the alleged statements and the context in which they were made, the Court correctly determined that they were not threats, as a matter of law. It was proper for the District Court to make a preliminary determination of whether or not Mr. Musico's statements could be a "true threat."^{iv} To constitute a "true threat," a defendant must have made the communication "for the purpose of issuing a threat, or with the knowledge that the communication will be viewed as a threat," rather than merely recklessly.^v The full review of the evidence clearly indicates that the statements made were political in nature. Most of them were even made during a lawful political protest. This

was even admitted by one of the government's witnesses during the preliminary examination. The meaning of a particular speech must be considered in its context.^{vi}

**STATEMENTS TO ALLEGED
CO-CONSPIRATORS CAN'T BE COMMUNICATIONS
UNDER M.C.L. 750.543m**

The District Court was correct in its analysis that the threat must be communicated to someone that was likely to have felt a threat of harm. The communication does not need to be to any specific victim. However, it must be made to the public and must incite a reaction.^{vii} In Gerhard, the defendant posted a picture and caption to a snap chat account. He referenced bringing an AR-15 to the college that he attended to "melt snowflakes." The Michigan Court of Appeals refused to quash the Information because it held that under the circumstance, the SnapChat post could be considered a threat. The Court of Appeals held "that defendant knew, at the time he made his Snapchat post, that recipients who fell into the category of persons he considered "snowflakes" would receive and feel threatened by the post."^{viii}

The statement made in the analysis of the Gerhard case supports the ruling made by the District Court. The District Court essentially said that because the member of the Wolverine Watchmen was a closed group whose members were vetted. That a member betrayed them and became a Federal Informant. However, the group members believed that everyone present had similar views and would not be threatened or harmed by any of the private speech made. There was no evidence presented that Mr. Musico knew that anybody outside the group would receive anything he said.

The ruling by the District Court is consistent with the published opinions regarding communication. The threat must be received by someone who will feel threatened or intimidated. There are several ways the Court of Appeals has allowed for that the happen. The

threat can be made in a manner in which members of the general public can receive it.^{ix} When taking into consideration all the different methods of communication, from SnapChat to a jail cell wall, the threat must be received by somebody that is likely to feel intimidated. That did not occur here as a matter of law.

The District Court was also correct in dealing with the argument regarding the Confidential Human Source. In the direct communication case argued before the Court of Appeals, Defendant knew the recipient was likely to feel threatened or intimidated.^x The Court of Appeals has allowed communication through email, telephone, yelling, and even in a private phone call to a third party. However, the Court is consistent that the threat must be communicated to someone likely to feel threatened or intimidated. In our case, the Confidential Human Source had passed the vetting process, been promoted to the number two position, and carried himself at all times as a believer in the group's philosophy. Mr. Musico could not reasonably believe that he would feel threatened or harmed by the statements. This is true as a matter of law. There is no question of fact to present to a jury.

CONCLUSION

Wherefore, we humbly request that this Court uphold the ruling by the District Court.

Respectfully Submitted,

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505 South Jackson Street
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ⁱ M.C.L. 750.543m

ⁱⁱ *People v Osantowski*, 274 Mich.App. 593, 601-605 (2007)

ⁱⁱⁱ *Virginia v Black*, 538 U.S. 343, 359 (2003)

^{iv} *People v Gerhard* 2021 WL2600829

^v *Elonis v United States*, 575 U.S. 723, 740 (2001)

^{vi} *Watts v. United States* 394 U.S. 705 (1969)

^{vii} *People v Gerhard* 2021 WL 2600819

^{viii} *Id* at page 5

^{ix} *People v Gerhard* 2021 WL 2600819 (SnapChat Post); *People v. Miars* 2020 3399573 (walls of a jail); *People v Carrier* 867 N.W.2d 463 (2015) (called mental health hotline); *People v Markham* 2012 WL 6178273 (gave a speech at City Hall)

^x *People v. Byczek* 2021 WL 1822804 (called the police directly); *People v. Wugley* 2021 WL 297609 (took hostages and made direct threats); *Thames v. City of Westland* 796 Fed.Appx. 251 6th Cir. (Mich) (threats to abortion clinic worker); *People v. Seastrom* 2019 WL 2517409 (called human resources after being denied employment); *In re Gilber* 2017 WL 2821755 (told classmates feeling like he did in 8th grade referencing a school shooting); *People v. Bally* 2015 WL 4169244 (threaten cashier in an open Meijer); *People v. Yaryan* 2010 WL 173641 (emails to church members)